

May 4, 2012

Monica Desai
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mdesai@pattonboggs.com

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Ex Parte Notice and Supplement to Windy City Cellular, LLC Petition for
for Waiver of the 84% Reduction in Per-Line Support in WC Docket Nos.
10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No.
09-51, WT Docket No. 10-208**

Dear Ms. Dortch:

Windy City Cellular, LLC (“WCC”) writes to supplement its Petition for Waiver of the service-ending 84% reduction in annual per-line high cost funding in the above-mentioned dockets with an alternate request for relief and additional letters of support. WCC also wants to emphasize the tragic disconnect between the Commission’s recent grant of an additional eight month extension to construct WCC’s proposed Clam Lagoon cell site with the devastating impacts of the USF/ICC Transformation Order (“Order”) ¹ that will force WCC to cease all operations **in less than eight weeks**, leaving entire areas in Adak completely without voice and broadband services.

¹ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) (“USF/ICC Transformation Order”). The Interim Support for Remote Areas in Alaska rule is to be codified at 47 C.F.R. § 54.307(e)(v).

A. Alternate Request for Relief

In its Petition, WCC requested a limited waiver of the interim \$3,000 annual per-line cap² on the grounds that “the reduction in existing high-cost support would put consumers at risk of losing voice service, with no alternative terrestrial providers available to provide voice telephony.”³ However, as suggested during in-person meetings with Commission staff,⁴ an alternative avenue of relief that may be easier to implement would be a full waiver of the \$3,000 cap for two years and, if feasible, applied retroactively to January 1, 2012, the date that the unexpected 84% reduction in funding became effective. This approach would be consistent with the Commission’s decision to adopt a two year delay for other USF reforms,⁵ is justified by the same reasons underlying a delayed transition plan for remote Alaskan carriers,⁶ and would allow WCC to continue providing the Adak community with access to critical wireless and broadband services. Specifically, a full waiver, particularly if retroactive,

² See *id.* at ¶ 529. The Interim Support for Remote Areas in Alaska rule is to be codified at 47 C.F.R. § 54.307(e)(v).

³ *USF/ICC Transformation Order*, ¶ 32. As explained in the Petition, imposition of the interim cap will create new unserved areas and roaming service gaps, will impose a hardship on WCC and the population of Adak Island, and will cause an end result that is at odds with the Commission's universal service and wireless goals to make more mobile wireless service available, especially in remote areas, for the general population and for public safety.

⁴ See Letter from Monica S. Desai, Counsel, Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte in CC docket no. 01-92, *et al.*, dated April 9, 2012; see also Letter from Monica S. Desai, Windy City Cellular, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte in CC docket no. 01-92, *et al.*, dated April 6, 2012.

⁵ See *USF/ICC Transformation Order*, ¶ 529.

⁶ See *id.* at ¶ 508.

would provide WCC the immediate funding needed to continue the work it has already abandoned to increase access and redundancy, re-hire employees who had to be laid off, and renegotiate a contract with its second backhaul provider.

Whether the Wireless Telecommunications Bureau (“Bureau”) decides a limited or full waiver will best serve the public interest, either form of relief will allow WCC the intended benefit of the Commission’s wise delayed transition plan for remote Alaska CETCs, allowing it to remain operational while funding under the Connect America Fund (“CAF”) becomes finalized. WCC wants to point out, however, that while it is hopeful that Mobility Funding under CAF will be adequate, it shares the concerns of the Regulatory Commission of Alaska (“RCA”) “that the future support levels for Alaska will not be sufficient to sustain current voice telecommunications operations let alone allow for the deployment of broadband services.”⁷ Like the RCA, WCC is worried that many rural communities, such as Adak, “may be left behind as the rest of the nation moves forward into the broadband world” and “encourages the FCC to again carefully consider Alaska’s needs as it makes decisions to continue its reform of universal service support mechanisms.”⁸

In any event, sufficiency of future funding is moot unless the Bureau grants some form of relief expeditiously to prevent WCC from shutting down service **in less than eight weeks**.

⁷ See Comments of the Regulatory Commission of Alaska, *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, at 4 (Jan. 18, 2012) (“*USF/ICC Transformation Order*”).

⁸ See *id.*

WCC hopes its flexibility in requested relief will allow the Bureau to take action quickly to prevent this “disproportionate and inequitable” result.⁹

B. Additional Letters of Support

WCC supplements Attachment A of its Petition for Waiver with the following additional letters of support from local government and business customers operating in Adak, as well as from members of the Alaskan delegation of the United States Congress. These supplemental letters should be included in Attachment A of both the public and confidential versions of WCC’s Petition for Waiver:

- Letter from Senator Mark Begich, Senator Lisa Murkowski, and Congressman Don Young dated April 20, 2012.
- Letter from Adak Community Development Corporation dated April 20, 2012.
- Letter from Icicle Seafoods, Inc. dated April 25, 2012.
- Letter from Eastern Aleutian Tribes dated April 26, 2012.
- Letter from the United States Fish and Wildlife Service.

These letters underscore how critical WCC’s service is to ensure continued communications access in Adak, one of the most remote areas in the nation. They demonstrate further evidence that a disruption in the voice and broadband services provided by WCC - that both government and commercial entities rely upon - will immediately threaten the safety and effectiveness of operations on the island, the critical availability of telemedicine and other healthcare services, the ability to comply with electronic regulatory obligations, and the sustainability of the fishing and seafood industry.

⁹ See USF/ICC Transformation Order, ¶ 508.

C. Clam Lagoon Construction Extension

As explained in its Petition, WCC originally planned to construct the Clam Lagoon cell site, projected to cost \$1 million, to enable network redundancy and prevent service interruptions that would otherwise occur if another cell site experienced operational problems, a result that often occurs because of the severe weather in the Adak area. However, in the wake of the *USF/ICC Transformation Order* and its devastating financial impact on WCC, construction on Clam Lagoon was halted.

Nevertheless, on April 4, 2012, five days before WCC's Petition for Waiver was noticed, WCC received a letter from the Bureau granting an eight month extension of the construction requirement for the proposed Clam Lagoon cell site.¹⁰ The Bureau based its decision on the "unique challenges" faced by Alaska licensees when deploying wireless service, the fact that WCC "has been diligent in its efforts to bring wireless service to this remote part of Alaska," and that "an extension of time is in the public interest."¹¹

There is an irony in the Bureau on one hand acknowledging that the public interest would be served by the construction of the Clam Lagoon cell site, while on the other hand the Commission's flash cut in funding not only precludes WCC from constructing this third cell site, but even more catastrophically will force WCC's other recently constructed, fully operational cell

¹⁰ See Letter from Thomas Derenge, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau to Larry D. Mayes, President and Chief Executive Officer, Windy City Cellular, LLC dated April 4, 2012.

¹¹ *Id.*

sites to go dark. Without relief, this tragic result will occur **in less than eight weeks**, leaving entire areas of the Adak community where WCC is the only provider of wireless and broadband service, including areas outside of downtown, on the sea and in the Aleutian Wilderness, to become unserved. If the Bureau believed that “an extension of time is in the public interest” for constructing Clam Lagoon, a cell site designed to improve coverage and increase redundancy, surely just maintaining current levels of service on Adak must be in the public interest as well.

All of these factors provide further evidence that the Commission could not have intended for the interim \$3,000 annual cap for remote carriers in Alaska to have such immediate, service-ending consequences. Without an expeditious waiver, the public interest will be harmed as WCC will continue to be forced to take substantial cost cutting measures that will further threaten the reliability of cell service in this remote area, the safety of the Adak population, and the fragile Adak economy.

Should you have any questions concerning the foregoing request, please contact the undersigned.

Respectfully submitted,

/s/ Monica S. Desai

Monica S. Desai and Jennifer L. Richter
Patton Boggs, LLP
2550 M Street, NW
Washington, DC 20037
(202) 457-7535
Counsel to Windy City Cellular, LLC

Letters of Support

Attachment A

United States Senate

WASHINGTON, DC 20510

April 20, 2012

Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Dear Chairman Genachowski:

The Alaska Congressional Delegation is writing in regard to the petition for waiver filed by Windy City Cellular on April 3. Our concern in this matter pertains to the impact on the people of Adak and the Bering Sea fishing fleet. Windy City Cellular has been providing a valuable telecommunications service to the community of Adak and the fishing fleet. We are concerned that if the company is unable to continue its operation, the impact on the residents and the fishing fleet will be detrimental.

Adak is at the far end of the Aleutian Chain. It is 1,197 miles from Anchorage. In comparison, that is the distance from the FCC's Washington DC office to its Resident Agent Office in Houston, Texas. Adak is arguably the most remote community in the United States. Therefore, as you can imagine, Adak's dependence on telecommunications is enormous. The risk of losing wireless telecommunications services presents a crisis and jeopardizes an integral part of an industry that supplies the United States with fifty percent of its seafood.

As we understand it, Windy City Cellular has indicated that it has the financial resources, after the reduction in its Universal Service Fund revenues, to continue operating for only a couple of weeks. Since Windy City's waiver was noticed on April 9, a 45-day comment period has begun to be followed by an additional 45 days allowed under commission rules for a response. We will be monitoring this timeframe very closely.

Given the serious implications that Windy City Cellular faces, we urge you to act as quickly as possible in rendering a decision on this petition. In the case that Windy City Cellular ceases operation, the negative impact on the people of Adak and the fishing fleet in the Bering Sea will be most severe.

We look forward to continuing to work with you and your staff. Please contact Andrea Sanders in Senator Begich's office at 202-224-3004, Jeremy Price in Senator Murkowski's office at 202-224-6665, and Jason Suslavich in Congressman Young's office at 202-225-5765 for further details. Thank you in advance for your prompt response.

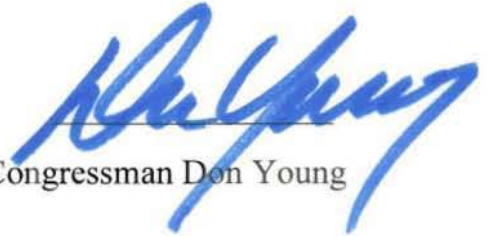
Sincerely,

A handwritten signature in blue ink, appearing to read "Mark Begich".

Senator Mark Begich

A handwritten signature in blue ink, appearing to read "Lisa Murkowski".

Senator Lisa Murkowski

A handwritten signature in blue ink, appearing to read "Don Young".

Congressman Don Young

CC: Commissioner Clyburn
Commissioner McDowell

Adak Community Development Corporation

April 20, 2012

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: USF/ICC Transformation Order - Impact on the community of Adak AK

Dear Ms. Dortch,

The Adak Community Development Corporation ("ACDC") is a non-profit corporation dedicated to the development of seafood harvesting and processing infrastructure for the community of Adak. Adak Island is the most westerly community in the state of Alaska. Our remote location makes it extremely challenging to foster economic development or to survive as a community.

One of the key infrastructure elements necessary for a viable seafood industry is internet and telecommunication access to the outside world.

Adak Eagle Enterprises LLC ("AEE") now provides Adak Island the modern communications services it needs in order to survive and thrive. Through its affiliate, Windy City Cellular LLC ("WCC"), mobile wireless service is available throughout the island. These services have been made possible through support from the Universal Service Fund ("USF"), and in the case of AEE, a loan from the United States Department of Agriculture Rural Utilities Service ("RUS").

The fishing industry relies on the telecommunications services provided by AEE and WCC. At the most basic level in the seafood business, because of the federal government's mandatory requirements for electronic reporting, the local fish processing plant can't even legally operate without internet access.

ACDC has learned that the Federal Communications Commission ("FCC") adopted an Order to reform the USF rules which went into effect for all wireless carriers in January

2012 and will go into effect for all Wireline carriers in July 2012. As a result of the changes in funding levels prescribed by this Order, ACDC has been informed by AEE and WCC that each company will have to stop all new projects and that it is likely that WCC will be out of business within six months and AEE will cease operations within two years unless each is granted a waiver by the FCC.

Universal access to telecommunications and the internet is a longstanding principle that is critical to integrating small remote communities like ours into the modern economy. The FCC should not abandon this principle of support for equal access through the USF.

Federal USF support has been essential to AEE's ability to provide telecommunications services and access the capital required to install modern telecommunications infrastructure in Adak. This support is critical to provide affordable, modern telecommunications services to the community.

The reforms announced by the FCC in the USF/ICC Transformation Order will drastically reduce the amount of support the Companies will receive. Due to the extremely high costs of providing services in Adak, the effect of the FCC's new rules will be felt more strongly in our community than any other place in the nation.

Unless the local providers are able to obtain waivers of the new rules or the relevant portions of the USF/ICC Transformation Order are reversed on appeal, we fear the local service providers will not be able to continue to provide service on Adak. We expect that the local service providers would collectively be driven into bankruptcy within 12 months, impacting the Rural Utilities Service ("RUS") fund by forcing default on loans extended to AEE.

Without a waiver, the consequences of the FCC Order on AEE and WCC will be felt throughout the economy of the entire Adak community. The overall safety, growth and economic development of this remote island will be jeopardized.

Adak is a struggling, rural community that needs substantial help to grow in order to off-set the high cost of operating in such a remote area with extreme weather conditions. We respectfully urge the FCC to please take into consideration the unique factors involved in servicing an area like Adak and to grant the requested waivers to AEE and WCC. These waivers will allow the Adak community to continue to have access to the reliable telecommunications services that are necessary for it to grow and be safe.

We support our local service providers in their efforts to obtain waivers of the new rules. If AEE is forced into bankruptcy there is no assurance another firm will move into Adak to provide service. When the Adak assets were previously made available to firms like

General Communications, Inc. and AT&T Alascom, these carriers declined to take over service in Adak.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Koso", with a long horizontal flourish extending to the right.

Rick Koso
Vice President
Adak Community Development Corporation
P.O. Box 1943
Adak AK, 99546

Cc:

Senator Lisa Murkowski
Senator Mark Begich
Congressman Don Young



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Alaska Maritime National Wildlife Refuge
95 Sterling Highway, Suite 1
Homer, Alaska 99603



Marlene H Dortch
Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, D.C. 20554

Dear Ms. Dortch,

I am writing to you concerning recent changes to the Universal Services Fund rules and how it might affect our operations out of remote Adak, Alaska.

The Alaska Maritime National Wildlife Refuge includes 2500 islands and headlands along much of Alaska's coast, including the Aleutian Islands. Encompassing 3.5 million acres, the refuge is home to 40 million nesting seabirds and much other wildlife. The headquarters for the refuge is in Homer, Alaska, but we maintain a critical forward operating base in Adak including multiple buildings, housing, supplies, communications equipment, and one year-round staff member plus many employees intermittently working out of Adak. As part of refuge operations, we operate a 120 foot research vessel from May – September and we also operate multiple remote field biology sites, monitoring and studying seabirds and other wildlife. Adak serves as our hub for all work in the Aleutians involving hundreds of researchers, technicians and crew. Our lone employee stationed continuously at Adak serves as our safety coordinator for field operations across the refuge, along with performing many other functions. All of our remote field camps perform mandatory safety checks through our Adak office. Field camps receive weather forecasts, tsunami warnings, and volcano warnings through Adak. Field camps file float plans to Adak for all small boat operations, including reports of their safe return following the boating operation.

Having telephone service, cell phone service, and internet service available on Adak is of extreme value to the refuge. The communications allowed by these technologies allow our ship and field camps to operate safely and effectively in this remote area, plus allow coordination with staff in our Homer office.

Thank you for all you have done and continue to do to make our communication center at Adak successful.

Sincerely,

Steve Delehanty
Refuge Manager

SEWARD FISHERIES

division of
ICICLE SEAFOODS, INC.
P.O. BOX 8
SEWARD, ALASKA 99664
(907) 224-3381
Fax (907) 224-3285



April 25, 2012

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, WA
Room TW-A325
Washington, DC 20554

RE: Impact of Recent Universal Service Support in Adak, Alaska

Dear Ms. Dortch:

Icicle Seafoods, Inc. is aware that your agency recently adopted rules that alter federal support for carriers that provide telecommunications services in rural, high-cost areas such as Adak. Our company relies on the telecommunications services provided by Adak Eagle Enterprises LLC as well as the Windy City Cellular LLC and will be severely and adversely impacted without those services.

We are all too aware of the extreme high costs associated with doing business in Adak and believe that Federal USF support is essential to the telecommunications infrastructure in Adak. In the past 3-5 years the fishing regulatory agencies have instituted and require electronic reporting regulations, we communicate through e-mail with our fishing vessels, have an inter-plant cellular system, etc. In this day and age, it would be impossible to conduct business without a viable communication system.

We support the Adak local service providers in their effort to obtain waivers of the new rule and appreciate your consideration. If you have any questions or require further information, please do not hesitate to contact me.

Sincerely,

ICICLE SEAFOODS, INC.

Melody Jordan
Adak Plant Manager
(907) 592-3474 – Adak Plant
(907) 362-1141 – Cell Phone

HOME OFFICE

4019 21ST Avenue West • Seattle, WA 98199
P.O. Box 79003 • Seattle, WA 98119 • Tel: 206-282-0988 • Fax: 206-282-7222



3380 C Street, Ste. 100, Anchorage, Alaska 99503
(907) 277-1440 * Fax (907) 277-1446
eatribes.Org

April 26, 2012

Marlene H Dortch, secretary
Federal Communications Commission
Office of the secretary
445 12th St. SW.
Room TW a 3 to 5
Washington, DC 20554

Eastern Aleutian Tribes is a nonprofit tribal health organization servicing all the tribal members and non-tribal members of the Adak community. Our service area is one of the largest of any health organization in the nation encompassing the entire Alaska Peninsula and Aleutian Islands extending from Anchorage all the way to the Eastern Hemisphere, more than 1900 miles of area.

One of the specific communities which we serve is the island of Adak. This island used to have a US military presence since 1942 during World War II. At its peak it had a population over 6000 people. As Adak Naval Air Station it continued to be a military base during the Cold War but was realigned during the base realignment and closures in 1995 and was completely closed in March 1997. Seven years later in 2004 the Aleut Corporation purchased Adak Island's land facilities and other land infrastructure improvements from the Department of the Interior and the U.S. Navy Department of Defense

In 2003 recognizing the critical need for telecommunications in the region, Adak Eagle Enterprises LLC stepped up and began providing modern communication services needed for this small community. Through its affiliate Windy City cellular, they also provide wireless mobile telephone service to the community. All these telecommunication services have been made possible through support from the Universal service fund and a loan from United States department of agricultural rural utility services (RUS).

We have become aware that the Federal Communications Commission has adopted an order to reform the USF rules which went into effect for all wireless carriers in January 2012 and will go into effect for all wireline carriers in July 2012. As a result of these changes in the funding levels program proposed by this order it will be impossible for Adak Eagle Enterprises and Windy City cellular to continue providing

"Eastern Aleutian Tribes has the healthiest people in the Nation"
Adak * Akutan * Cold Bay * King Cove * Nelson Lagoon * Sand Point * Whittier

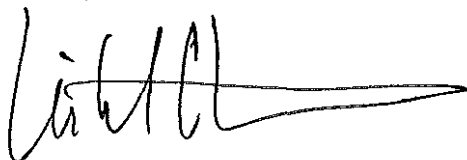
service and they will be without other support funding and will likely go out of business within 5 to 6 months following these changes.

We believe that a waiver is critical so that the consequences of the FCC order will not be felt in Adak. Should Adak Eagle Enterprises and Windy City cellular be unable to continue provision of telephone and cellular telephone service in the island of Adak critical government entities including the Fish and Wildlife Service, the Marine exchange, United States Albuquerque seismological laboratory, the Alaska Volcano Observatory, and other government agencies will be forced to close.

Eastern Aleutian tribes would have an immediate impact should this occur. It would be impossible for us to continue to provide the quality healthcare service which we currently allow in the community without critical telephone and cellular infrastructure support. Because of the great distance between Adak Island and Anchorage Alaska where the primary hospital our patients are seen in, we utilize extensively TeleVideo and telephonic communication tools. Without these tools, critical communication between physicians, the hospital, and our clinic would be severed we would be forced to go to a much more expensive satellite telecommunication process which would raise costs to the point of creating such a disparity that we would be forced to close the clinic.

We urgently and respectfully request the FCC to take into consideration the unique and critical factors involved in servicing an area like Adak with telecommunication services. We support the FCC granting the requested waivers to Adak Eagle Enterprises and Windy City cellular in order that they can continue to provide for our clinic and the community of Adak critical telephone and cellular telephone support.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Christiansen', with a long horizontal stroke extending to the right.

Michael Christiansen

CEO, executive director

Eastern Aleutian tribes